

Effective 5/13/2014

Part 4 Transparency

16-10b-401 Preparation of annual benefit report.

- (1) A benefit corporation shall prepare an annual benefit report that includes all of the following:
 - (a) a narrative description of:
 - (i) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;
 - (ii)
 - (A) the ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and
 - (B) the extent to which that specific public benefit was created; and
 - (iii) circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit;
 - (b) an assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:
 - (i) applied consistently with the application of that third-party standard in prior benefit reports; or
 - (ii) accompanied by an explanation of the reasons for an inconsistent application;
 - (c) the name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;
 - (d) the statement of the benefit director described in Subsection 16-10b-302(3);
 - (e) an identification of the third-party standard that will be used to prepare the next benefit report of the benefit corporation and a discussion of:
 - (i) the process and rationale for selecting that third-party standard and, if it is different from the previous third-party standard used by the benefit corporation, the reasons for the change; and
 - (ii) any connection between the organization that established the third-party standard, or its directors, officers, or a holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or a holder of 5% or more of the outstanding shares of the benefit corporation, including a financial or governance relationship that might materially affect the credibility of the use of the third-party standard; and
 - (f) if the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, a description of the persons that exercise the powers, duties, and rights and who have the immunities of the board of directors.
- (2) If, during the year covered by a benefit report, a benefit director resigns, refuses to stand for reelection to the position of benefit director, or is removed from the position of benefit director, and the benefit director furnishes the benefit corporation with written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report shall include that correspondence as an exhibit.
- (3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by Subsection (1)(b) needs to be audited or certified by a third party.

Enacted by Chapter 394, 2014 General Session

16-10b-402 Availability of annual benefit report.

- (1) A benefit corporation shall send its annual benefit report required by Section 16-10b-401 to each shareholder on the earlier of:
 - (a) 120 days following the end of the fiscal year of the benefit corporation; or
 - (b) the same time that the benefit corporation delivers another annual report to its shareholders.
- (2) A benefit corporation shall post all of its annual benefit reports on the public portion of its Internet website, if any, but financial or proprietary information included in the annual benefit reports may be omitted from the annual benefit reports as posted.
- (3) If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent annual benefit report, without charge, to a person that requests a copy, but financial or proprietary information included in the annual benefit report may be omitted from the copy of the benefit report provided.
- (4)
 - (a) At the same time that the benefit corporation files its annual report with the division in accordance with Section 16-10a-1607, the benefit corporation shall deliver the most recent copy of the annual benefit report to the division for filing, but financial or proprietary information included in the annual benefit report may be omitted from the annual benefit report as delivered to the division.
 - (b) The division shall charge a fee established by the division in accordance with Section 63J-1-504 for filing an annual benefit report.
 - (c) The benefit corporation shall file the annual benefit report in addition to the annual report required by Section 16-10a-1607.

Amended by Chapter 20, 2015 General Session